

AMENDMENT TO THE DRAWINGS

Please accept and enter the proposed drawing corrections to Figs. 4B and 4C as indicated in red ink in the attached drawing page.

REMARKS

Reconsideration and allowance of this application are respectfully requested in view of the foregoing amendments and the following explanations and remarks.

Claims 1-14, 16, 17 and 19 have been canceled.

Applicant's agent wishes to first discuss the provisionally allowable subject matter and then the rejection of the claims under 35 U.S.C. 102(b) based on the Millasich reference.

On page 3 of the Office Action, claims 18-20 were objected to as being dependent upon a rejected base claim, but were deemed to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Provisionally allowable claim 18 has been rewritten in independent form and to include all of the limitations of original base claim 15 and intervening claim 16, which should now make claim 18 an allowable base claim. Provisionally allowable claim 20 now depends directly from an allowable base claim, and should now be allowable along with amended claim 18.

On page 2 of the Office Action, claims 15 and 16 were rejected under 35 U.S.C. 102(b) as being anticipated by Millasich.

Millasich teaches a paint bucket (11) lined with a plastic bag type liner (15) held in place by an airtight circumferential sealing ring (16) that engages the rim (14) of the bucket (11). The bucket has a reservoir with a disk shaped bottom wall (13) attached to the bucket side wall (12) and a closable orifice or one way air valve (17) attached through the bottom wall that allows air to pass only from the interior reservoir to the environment outside of the bucket. A base plate (19) is suspended in vertically spaced relation to the air valve to prevent the liner

from being sucked into the air valve and provides support for the weight of the paint within the reservoir. A plurality of air holes (20) are formed in the base plate 19 and around its marginal edges, to encourage the liner to occupy the entire space available within the reservoir. The base plate (19) is suspended on top of an open celled foam rubber cushion 21 disposed between the bottom wall (13) and the base plate, or by open celled or air permeable means, including fixed pillars, columns, struts or other support members to allow air to escape from the space between the liner and bucket and out through the valve. A conical bucket stand (23) is provided and frictionally engaged with the bottom extremity of bucket in embodiments where the air valve protrudes from the bottom wall.

Millasich teaches fitting a plastic liner (15) in the bucket (11), pulling the upper edge of the liner around, down and over sealing lip or rim (14). The sealing ring (16) is then installed over the liner and engaged with the sealing lip or rim to form an airtight seal between liner and the bucket. An air pump (18) is then attached to the exterior portion of the valve (17) in the bottom wall and activated to extract air from the space between the liner and bucket and adhere the liner to the side wall (12) and base plate (19).

Thus, the bottom wall (13) and the base plate (19) of Millasich are both fixed to the side wall (12) and there are no moving parts, and air is extracted from the space between the liner and the bucket by an air pump (18).

Claim 16 has been canceled and base claim 15 has been amended to provide additional details structural elements functioning together and set forth in a method of operation which is submitted to be clearly distinguished over the Millasich reference.

Amended base claim 15 provides an outer base member having a lower chamber and an inner receptacle having an upper chamber movably disposed in the outer base member, and operates on the principle of moving the inner receptacle relative to the outer base member to increase the volume of the lower chamber relative to the volume of the upper chamber to extract air trapped between exterior surfaces of the empty liner and interior surfaces of the upper chamber and create a vacuum therebetween sufficient to eliminate air pockets and billowing and draw the empty liner against said interior surfaces in a full open position.

For a claimed invention to be properly rejected under 35 U.S.C. 102, the claimed invention must be completely described or illustrated within the four corners of a single prior art reference. The Seventh Circuit has also stated that:

"anticipation is strictly a technical defense...unless all of the same elements [of the sought-to-be patented device] are found [in a single prior art reference] in exactly the same situation and united in the same way to perform an identical function, [the former is not anticipated by the latter.]"

Illinois Tool Works, Inc. v. Sweetheart Plastics, Inc. 436 F.2d 1180, 1182-83, 168 USPQ 451, 453-454 (7th Cir. 1971).

Clearly Millasich does not show, describe, or suggest all of the features recited in amended base claim 15 in exactly the same situation and united in the same way to perform an identical function.

It is also submitted that Millasich operates on a different principle from Applicant's device. Millasich utilizes a pump to evacuate air trapped between the liner and interior surfaces of the container. Applicant's method of operation utilizes movement of the inner receptacle relative to the outer base member to increase the volume of the lower chamber

relative to the volume of the upper chamber to extract air trapped between the empty liner and interior surfaces of the container and create a vacuum therebetween sufficient to eliminate air pockets and billowing and draw the empty liner against the interior surfaces.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.

In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The court held that the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.).

Therefore, it is respectfully submitted that amended base claim 15 is now clearly distinguished over the Millasich reference and is not anticipated nor obvious based on the teachings contained in the reference, and should be allowed along with claim 18.

The remarks set forth above are equally applicable to newly presented claims 21 and 22, which define the invention in somewhat broader terms.

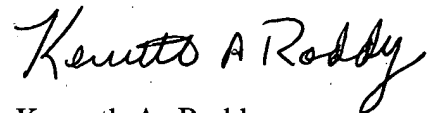
As discussed above, Millasich does not show, describe, or suggest all of the features recited in newly presented claims 21 and 22 in exactly the same situation and united in the same way to perform an identical function, and Millasich operates on a different principle from the method recited in the newly presented claims.

Therefore, it is respectfully submitted that claims 15 and 18, as amended, and newly presented claims 21 and 22 now include subject matter deemed to be allowable, and are believed to be allowable for the reasons discussed above.

As indicated in red ink on the attached page of proposed drawing corrections, the bottom wall of the inner receptacle 42 was mislabeled in Fig. 4B as 47 and has been corrected to be 48 and the numeral 48 was added to Fig. 4C to identify the bottom wall.

Accordingly, in view of the foregoing amendments, explanations and remarks it is respectfully requested that amended claims 15 and 18 be reconsidered and allowed, and that newly presented claims 21 and 22 be entered and allowed, and that this application be passed to issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Kenneth A. Roddy". The signature is written in a cursive style with a large, stylized 'K' and 'R'.

Kenneth A. Roddy
Agent for Applicant
Registration No. 31,294

January 18, 2005

Suite 100
2916 West T.C. Jester Blvd.
Houston, TX 77018
(713) 686-7676